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REMARKS

In the non-final office action mailed July 20, 2006, claims 1-80 were pending. Claims 39-58 and 63-80 were withdrawn as being directed to a non-elected invention, and claims 1-38 and 59-62 were rejected. In this response, claims 39-58 and 63-80 have been cancelled without prejudice to pursuit in a divisional application. Claims 1, 12, 13, 20, 28, 29, 30, 36, 38, 59 and 61 have been amended, and claim 81-93 have been added. Reconsideration of the present application as amended and including claims 1-38, 59-62 and 81-93 in view of the remarks that follow is respectfully requested.

Claim 38 was objected to and it was indicated that it appears it should depend from claim 36 rather than claim 26. Claim 38 has been amended to depend from claim 36 and also to insert a period after the claim number. Withdrawal of the objection to claim 38 is respectfully requested.

Claims 1-18, 20-22, 28-33, and 59-61 were rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,793,658 to LeHuec et al. LeHuec et al. disclose a plate with window 627 defined in part by an upper end wall adjacent upper nose 620a. The upper end wall has a convex curvature along the window and across the longitudinal axis of the plate. Amended claim 1 recites "an elongate plate including a length extending along a longitudinal axis adapted to span a space between adjacent vertebrae, said plate including a first connection portion attachable to a first one of the adjacent vertebrae and a second connection portion attachable to a second one of the adjacent vertebrae, and an intermediate portion extending between said first and second connection portions, said intermediate portion including a visualization opening extending therethrough for visualizing the space when said plate is attached to the adjacent vertebrae, said visualization opening including at least one convexly curved side wall extending along the longitudinal axis and opposite end walls on opposite ends of said visualization opening extending across the longitudinal axis, each of said end walls including a concave shape extending across the longitudinal axis." Accordingly, claim 1 distinguishes LeHuec et al. and withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2-18 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable. Withdrawal of this basis of the rejection of these claims is respectfully requested.

Response to Office Action
Application Serial No. 10/603,471
Page 12 of 16

LeHuec et al. disclose a plate with a triangular shape so that the upper node has a width sized to accommodate a single opening on the longitudinal axis of the plate and the other end of the plate has a greater width sized to accommodate two openings on opposite sides of the longitudinal axis of the plate. Amended claim 20, in contrast, recites "an elongate plate extending along a longitudinal axis and including a length along the longitudinal axis adapted to span a space between adjacent vertebrae, said plate including a first connection portion attachable to a first one of the adjacent vertebrae and a second connection portion attachable to a second one of the adjacent vertebrae, and an intermediate portion extending between said first and second connection portions, wherein said first and second connection portions have substantially the same width across said longitudinal axis and each includes at least two holes on opposite sides of the longitudinal axis for receiving bone engaging fasteners, said intermediate portion including a visualization opening extending therethrough for visualizing the space when said plate is attached to the adjacent vertebrae, wherein said intermediate portion includes a first member along one side of said visualization opening and a second member along the opposite side of said visualization opening, wherein said first and second members each include a first width between an outer side surface of said plate and an inner side wall of said visualization opening, said visualization opening including a second width between inner side walls of said first and second members, said second width being greater than the combined first width of said first and second members." Accordingly, claim 20 distinguishes LeHuec et al. and withdrawal of this basis of the rejection is respectfully requested.

Claims 21 and 22 depend from claim 20 and are allowable at least because claim 20 is allowable. Withdrawal of this basis of the rejection of claims 21 and 22 is respectfully requested.

The office action asserts tool 450 in LeHuec et al. is a holding instrument adapted to hold plate 607 with a clamping force. However, tool 450 is disclosed as a bending tool to bend or deform retaining elements adjacent the plate holes. There is no disclosure that tool 450 is a holder or is otherwise configured to hold the plate with a clamping force between end walls of the plate. Amended claim 28 recites "a plate including a length extending along a longitudinal axis and comprising at least a first end wall and a second end wall each extending transversely to said longitudinal axis; and a holding instrument including a remotely actuatable holding system adapted to hold the plate with a clamping force between said first and second end walls, wherein said first

end wall forms an outer end surface of said plate and said second end wall is an end wall of a visualization opening extending through said plate.” Accordingly, withdrawal of the rejection of claim 28 is respectfully requested.

Claims 29-33 depend from claim 28 and are allowable at least because claim 28 is allowable. Withdrawal of this basis of the rejection of claims 29-33 is respectfully requested.

In rejecting claim 62, the office action states “LeHuec et al. disclose all elements of the claimed invention except for ... the plate being formed of a translucent material.” Claim 59 recites “wherein said intermediate portion is comprised of a translucent material for visualizing the space when said plate is attached to the adjacent vertebrae.” Accordingly, LeHuec et al. does not disclose claim 59 and withdrawal of this basis of the rejection of claim 59 and claims 60-61 depending therefrom.

Claims 28, 34-36 and 38 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,851,207 to Cesarone. Cesarone discloses a drill guide with a guide sleeve 12 where the distal end of the guide sleeve 12 is positioned in the plate hole to secure the drill guide to the plate, as shown for example in Figs 5-6A and associated discussion in the specification. There is no disclosure of any holding system that provides a clamping surface between first and second end walls of the plate. Accordingly, Cesarone does not disclose “a holding instrument including a remotely actuatable holding system adapted to hold the plate with a clamping force between said first and second end walls, wherein said first end wall forms an outer end surface of said plate and said second end wall is an end wall of a visualization opening extending through said plate.” Therefore, claim 28 distinguishes Cesarone and withdrawal of this basis of the rejection of claim 28 and claims 34-35 depending therefrom is respectfully requested.

Furthermore, since the guide sleeve 12 is secured in the plate hole, Cesarone fails to disclose “a guide mechanism along said actuating system including at least one guide member spaced proximally from said plate when said holding system is engaged to said plate and with said at least one guide member positioned relative to said plate to guide placement of a bone engaging fastener through said at least one hole” as recited in claim 36. Cesarone also fails to disclose “a holding system operably coupled to said actuating system, said holding system including first and second holding members movable with said actuating system between a release position and a clamping position to selectively engage and release said plate therebetween along said longitudinal axis

thereof" as recited in claim 36. Accordingly, withdrawal of this basis of the rejection of claim 36 along with the rejection of claim 38 depending therefrom is respectfully requested.

Claims 28 and 34-38 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,423,826 to Coates et al. Coates discloses a drill guide in Figs. 10 and 13 that has a flange 113 positionable against the end 124 of the plate 21. Figs. 14, 17 and 19 disclose a plate holder that clamps against the upper and lower ends of the plate, as shown in Fig. 17. Accordingly, Coates et al. does not disclose "a holding instrument including a remotely actuatable holding system adapted to hold the plate with a clamping force between said first and second end walls, wherein said first end wall forms an outer end surface of said plate and said second end wall is an end wall of a visualization opening extending through said plate." Therefore, claim 28 distinguishes Coates et al. and withdrawal of this basis of the rejection of claim 28 and claims 34-35 depending therefrom is respectfully requested.

Coates et al. also discloses a guide body 110 with a lower surface 111 that contact the upper surface of the plate when the guide is engaged to the plate. In the embodiment of Figs. 14-19, the holder guide 150 includes feet 157 contacting the upper surface of the plate when engaged thereto. Coates et al. fails to disclose "a guide mechanism along said actuating system including at least one guide member spaced proximally from said plate when said holding system is engaged to said plate and with said at least one guide member positioned relative to said plate to guide placement of a bone engaging fastener through said at least one hole" as recited in claim 36. Accordingly, withdrawal of this basis of the rejection of claim 36 along with the rejection of claims 37-38 depending therefrom is respectfully requested.

Claims 23-27 and 62 were rejected under 35 USC §103(a) as being unpatentable over LeHuec et al. alone. Claims 23-27 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable as discussed above. Claim 62 depends from claim 59, which is believed allowable as discussed above. Claim 62 is allowable at least since it depends from an allowable base claim.

Claim 62 was rejected under 35 USC §103(a) as being unpatentable over LeHuec et al. in view of U.S. Patent No. 6,514,274 to Boucher et al. Claim 62 depends from claim 59, which is believed allowable as discussed above. Claim 62 is allowable at least since it depends from an allowable base claim.

New claims 81-92 have been added in this response. Claim 81 is directed to the subject matter of original claim 19. Claim 19 was indicated as being rejected in the Office Action Summary, but no reference was applied to it or explanation of the rejection was supplied in the detailed action. Claim 19 is believed allowable since the cited references do not disclose or suggest the combination of features recited therein. Accordingly, claim 81 is believed allowable along with claims 82-88 depending therefrom.

New claim 89 is generally along the lines of original claim 36 but includes additional features relating to the plate. The cited references do not disclose or suggest the combination of features recited in claim 89, and claim 89 is believed allowable along with claims 90 and 91 depending therefrom.

New claims 92 and 93 depend from claim 1 and recite further features of the side walls and end walls of the visualization opening. Claims 92 and 93 are allowable along with claim 1.

In view of the foregoing amendments and remarks, the application including claims 1-38, 59-62 and 81-93 is believed in condition for allowance. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

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Response to Office Action
Application Serial No. 10/603,471
Page 16 of 16